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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/355,732	08/04/1999	KAZUHIKO MARUYAMA	1137-782A	6854

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EXAMINER

NGUYEN, LEE

ART UNIT PAPER NUMBER

2682

DATE MAILED: 05/18/2005

25

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/355,732

Applicant(s)

MARUYAMA, KAZUHIKO

Examiner

LEE NGUYEN

Art Unit

2682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13,14 and 16-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-35 is/are allowed.
- 6) ☒ Claim(s) 13-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This action is responsive to the amendment filed 02/22/2005. Claims 1-12 and 15 were canceled. Claims 16-35 were allowed. Claims 13-14 were rejected under new ground of rejection by the Board of Patent Appeals and Interferences.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 13-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

For the rejection see the Decision on Appeal issued on December 21, 2004.

***Response to Arguments***

4. Applicant's arguments filed 02/22/2005 have been fully considered but they are not persuasive.

In the remarks, Applicant contends that with respect to how the rate of increase is to be measured, Applicants submit that the skilled artisan would readily understand that communication data could be measured a number of conventional ways. At page 8 of the present specification, radio terminals are described as being composed of "a buffer 11 for storing data to be sent; and amount-of-data monitor 12 for detecting the amount of data stored in the buffer 11, for example, in terms of software under program control." Also, the individual base stations are described as being made up of a "receiver 21, a demodulator 22, a buffer 23 for storing received data, and amount-of-data monitor 24 for detecting the amount of data stored in the buffer 23; for example, in terms of software under program control." One skilled in the art would readily understand that data to be transmitted (communication data) is first stored in buffer 11 and that an appropriate software program could be included to determine the amount of data in the buffer,

which could be measured conventionally in bits or bytes, or any appropriate unit of measure for electronic data over a standard time frame such as a millisecond or second. Thus, Applicants submit that to understand this would not require "undo experimentation."

In support of the above, Applicants submit herewith new evidence in the form of a reference'. "High Time-Resolution Measurement and Analysis of LAN Traffic: Implication for LAN Interconnection" WII E. Leland and Daniel V. Olson, In Proc. Of IEEE INFODCOM'91, 1991, Pages 1360-1366. This reference relates to TCP/IP packet for LAN interconnection.

Please see figure 3.1.1, which shows "packets per second" in a vertical axis.

This reference shows that, at the time of the present invention, the skilled artisan understood how to measure communication data using a number of conventional ways. The Board also stated that "there's no guidance to the artisan as to how the number of radio channels to be assigned may be determined by measuring a "rate of

increase" of stored data to be transmitted "per unit time"

See Decision at page 6. However, the present specification states that, for example, "if the amount of communication data exceeds the channel capacity of the channel M+1 the radio terminal A(5) requests the individual base station 1A to use, for example, channels M and M+2 adjacent the channel M+1 as shown in Fig. 3(b)." See present specification at page 9. In view of this, Applicants submit that the skilled artisan would readily understand that the assignment of channels can be based upon the channel capacity of each radio channel of the communication linkage. Based on this, the skilled artisan will readily understand how to increase or decrease the number of radio channels based on a measurement of the data in the buffer (data to be transmitted). Therefore, Applicants submit that the rejection claims 13 and 14 is improper and that the specification clearly provides enabling support for the features of claims 13 and 14.

In response, it is agreed that the Bellcore's laboratory can measure the rate packets/second deliver to or originate from the router in the


LAN as cited by Applicant. However, the router in the laboratory of the Bellcore Corporation differs from the buffer of Applicant's invention. Packets/second delivered or originated from the router of Bellcore is different from the rate of increase of stored data per unit time in the buffer of the claimed invention. Applicant still has not shown from his own invention how the rate of increase of stored data per unit of time is established, rather than using someone else's non related idea to protect his stand.

From the above, the rejection of claims 13-14 should be sustained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEE NGUYEN whose telephone number is (571)-272-7854. The examiner can normally be reached on 8:00 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, VIVIAN CHIN can be reached on (703) -272-7848. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 5/15/05  
LEE NGUYEN  
Primary Examiner  
Art Unit 2682